

## Message Text

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INFO ERDA GERMANTOWN MD

UNCLAS SECTION 1 OF 2 GENEVA 6333

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SUBJECT: CCD - NWFZ STUDY, CHAPTER SIX (NWFZS AND INTERNATIONAL  
LAW)

REF: A) GENEVA 6321; B) GENEVA 6328

FOLLOWING IS TEXT CHAPTER SIX (NWFZS AND INTERNATIONAL  
LAW, IN FORM EXPECTED TO BE APPROVED AD REFERENDUM  
BY EXPERTS AT EVENING MEETING AUGUST 13.

BEGIN TEXT:

VI. NUCLEAR-WEAPON-FREE ZONES AND INTERNATIONAL LAW

RELATIONSHIP WITH INTERNATIONAL LAW

1. ARRANGEMENTS FOR THE EXCLUSION OF NUCLEAR WEAPONS FROM  
VARIOUS AREAS OF THE GLOBE ARE FULLY CONSISTENT WITH THE PRO-  
VISIONS OF THE UNITED NATIONS CHARTER, AND PARTICULARLY WITH  
ITS ARTICLE 1 UNDER WHICH STATES UNDERTAKE "TO TAKE EFFECTIVE  
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COLLECTIVE MEASURES FOR THE PREVENTION AND REMOVAL OF THREATS

TO THE PEACE..., TO DEVELOP FRIENDLY RELATIONS AMONG NATIONS  
... AND TO TAKE OTHER APPROPRIATE MEASURES TO STRENGTHEN  
UNIVERSAL PEACE".

2. THE CREATION OF NUCLEAR-WEAPON-FREE ZONES IS ALSO CONSISTENT WITH THE PROVISIONS OF ARTICLE 52 OF THE CHARTER, WHICH ENVISAGES THE EXISTENCE OF REGIONAL ARRANGEMENTS OR AGENCIES FOR DEALING WITH SUCH MATTERS RELATING TO THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY AS ARE APPROPRIATE FOR REGIONAL ACTION.

3. SOME EXPERTS NOTED THAT THE ESTABLISHMENT OF SUCH ZONES IS FURTHERMORE IN CONFORMITY WITH THE PRINCIPLES GOVERNING DEMILITARIZED ZONES.

4. THE CREATION OF A NUCLEAR-WEAPON-FREE ZONE SHOULD BE EFFECTED IN ACCORDANCE WITH INTERNATIONAL LAW, THE PRINCIPLES OF THE UNITED NATIONS CHARTER AND SPECIFICALLY WITH THE FOLLOWING FUNDAMENTAL PRINCIPLES GUIDING THE MUTUAL RELATIONS OF STATES: SOVEREIGN EQUALITY AND RESPECT FOR THE RIGHTS INHERENT IN SOVEREIGNTY; REFRAINING FROM THE THREAT OR USE OF FORCE AGAINST THE TERRITORIAL INTEGRITY OR POLITICAL INDEPENDENCE OF ANY STATE; THE INVIOABILITY OF FRONTIERS; THE TERRITORIAL INTEGRITY OF STATES; PEACEFUL SETTLEMENT OF DISPUTES; NON-INTERVENTION IN INTERNAL AFFAIRS; EQUAL RIGHTS AND SELF-DETERMINATION OF PEOPLES; THE RIGHT OF SELF-DEFENCE; CO-OPERATION AMONG STATES; AND FULFILMENT IN GOOD FAITH OF OBLIGATIONS UNDER INTERNATIONAL LAW.

5. IN FULL COMPLIANCE WITH THESE PRINCIPLES, IT IS UNANIMOUSLY RECOGNIZED THAT THE CREATION OF A NUCLEAR-WEAPON-FREE ZONE SHOULD BE PART OF A SYSTEM OF MEASURES AIMED AT THE PREVENTION OF NUCLEAR WEAPONS PROLIFERATION AND THE ACHIEVEMENT OF GENERAL AND COMPLETE DISARMAMENT, INCLUDING NUCLEAR DISARMAMENT. THE ESTABLISHMENT OF A NUCLEAR-WEAPON-FREE ZONE IS NOT TO BE REGARDED AS AN END IN ITSELF, BUT AS A MEANS TOWARDS THE WIDER OBJECTIVES OF GENERAL AND COMPLETE DISARMAMENT AND OF INTERNATIONAL PEACE AND SECURITY. THE VIEW WAS ALSO EXPRESSED THAT THE TREATIES ESTABLISHING SUCH ZONES MAY PROVIDE FOR THE INCLUSION OF OTHER STATES THAT AGREE TO JOIN THE ZONE AND ALSO

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FOR THE ADOPTION OF FURTHER MEASURES OF DISARMAMENT.

6. MANY EXPERTS FROM NON-NUCLEAR-WEAPON STATES, EMPHASIZED THAT STATES MEMBERS OF A NUCLEAR-WEAPON-FREE ZONE SHOULD RECEIVE ADEQUATE AND EFFECTIVE SECURITY ASSURANCES FROM THE NUCLEAR-WEAPON STATES NOT TO USE OR THREATEN TO USE NUCLEAR WEAPONS AGAINST MEMBERS OF THE ZONE AND MAINTAINED THAT STATES MEMBERS OF THE ZONE HAD A RIGHT TO EXPECT SUCH ASSURANCES ON THE BASIS

BOTH FROM THE GENERAL PRINCIPLE THAT STATES SHOULD REFRAIN IN THEIR INTERNATIONAL RELATIONS FROM THREAT OR USE OF FORCE, AND THE NATURE OF OBLIGATIONS WHICH THE NON-NUCLEAR-WEAPON STATES WOULD BE UNDERTAKING IN CREATING THE NUCLEAR-WEAPON-FREE ZONE. THESE EXPERTS STRESSED THAT FROM THE PURELY LEGAL STANDPOINT THE EXISTENCE OF NUCLEAR-WEAPON-FREE ZONES DOES NOT DEPEND ON RECOGNITION OR GUARANTEES FROM OUTSIDE STATES; A STATE OR GROUP OF STATES NEED ONLY DECIDE TO PROHIBIT NUCLEAR WEAPONS IN THE TERRITORY OR TERRITORIES UNDER THEIR SOVEREIGNTY, AND IN LAW, THE ZONE COMES INTO EXISTENCE. NEVERTHELESS, THERE IS NO DOUBT THAT THE MERE EXISTENCE DE JURE OF A NUCLEAR-WEAPON-FREE ZONE IS NOT SUFFICIENT UNLESS THE ZONE WORKS DE FACTO. HENCE THE ADVISABILITY OF APPROPRIATE RECOGNITION AND GUARANTEES.

7. MANY OTHER EXPERTS, WHILE BELIEVING THAT ASSURANCES COULD NOT BE CONSIDERED A RIGHT UNDER INTERNATIONAL LAW, RECOGNIZED THAT CERTAIN TYPES OF ASSURANCES COULD CONTRIBUTE TO THE EFFECTIVENESS OF A ZONE. IN THEIR VIEW, THE QUESTION OF COMMITMENTS BY EXTRA-ZONAL STATES COULD ONLY BE RESOLVED THROUGH MUTUAL AGREEMENTS AND SHOULD BE CONSIDERED AT THE TIME A PARTICULAR NUCLEAR-WEAPON-FREE ZONE ARRANGEMENT IS BEING NEGOTIATED, TAKING INTO ACCOUNT REGIONAL FACTORS, INCLUDING EXISTING SECURITY ARRANGEMENTS.

8. MOST EXPERTS NOTED THAT A NUCLEAR-WEAPON-FREE ZONE TREATY CANNOT IMPAIR THE INHERENT RIGHT, UNDER ARTICLE 51 OF THE CHARTER, OF INDIVIDUAL OR COLLECTIVE SELF-DEFENCE IF AN ARMED ATTACK OCCURS AGAINST A MEMBER OF THE UNITED NATIONS UNTIL THE SECURITY COUNCIL HAS TAKEN MEASURES NECESSARY TO MAINTAIN INTERNATIONAL PEACE AND SECURITY.

9. DISPUTES ARISING IN RELATION TO THE FUNCTIONING AND INTER-  
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PRETATION OF A NUCLEAR-WEAPON-FREE ZONE TREATY SHOULD BE SETTLED BY PEACEFUL MEANS AND THE TREATY SHOULD CONTAIN ADEQUATE PROVISIONS IN THIS RESPECT. THE SETTLEMENT OF DISPUTES AS WELL AS THEIR PREVENTION WOULD BE GREATLY FACILITATED BY THE EXISTENCE IN THE TREATY OF PROVISIONS FOR EFFECTIVE SAFEGUARDS AND CONTROL.

10. MANY EXPERTS EMPHASIZED THAT IN DRAFTING THE TERRITORY OF A NUCLEAR-WEAPON-FREE ZONE, MEMBERS OF THE ZONE MUST RESPECT INTERNATIONAL LAW, INCLUDING THOSE PRINCIPLES RELATING TO THE HIGH SEAS, TO STRAITS USED FOR INTERNATIONAL SHIPPING AND TO INTERNATIONAL AIR SPACE.

11. IN EXAMINING THE LEGAL QUESTIONS POSED BY THE CREATION OF A NUCLEAR-WEAPON-FREE ZONE, IT HAS BEEN MAINTAINED BY MANY

EXPERTS THAT THE QUESTION OF THE LEGAL OBLIGATIONS OF NUCLEAR-WEAPON STATES WOULD BE OF PARTICULAR RELEVANCE, BECAUSE ALTHOUGH FROM A PURELY LEGAL STANDPOINT THE EXISTENCE OF THE ZONE NEED NOT DEPEND ON RECOGNITION OR GUARANTEES BY THESE STATES, ITS EFFECTIVENESS WOULD. OTHER EXPERTS CONSIDERED THAT CIRCUMSTANCES WOULD VARY SO CONSIDERABLY THAT IT WAS IMPRACTICABLE TO ATTEMPT TO ESTABLISH GENERAL PRINCIPLES ON THIS MATTER.

12. SOME EXPERTS SUGGESTED THAT CONSIDERATION SHOULD BE GIVEN IN A ZONE TREATY TO LEGAL QUESTIONS RAISED BY INCLUDING WITHIN THE ZONE AREAS OUTSIDE THE SOVEREIGNTY OF STATES MEMBERS OF THE ZONE, OR OF CREATING WHAT HAVE BEEN PREVIOUSLY DESCRIBED AS SAFETY AREAS. THEY MAINTAINED THAT IT WAS ESSENTIAL THAT SAFETY AREAS BE ESTABLISHED ADJACENT TO NATIONAL TERRITORIES IN ORDER TO MAKE A ZONE MORE EFFECTIVE, AND ARGUED THAT THE ESTABLISHMENT OF SUCH SAFETY AREAS DID NOT REPRESENT A UNILATERAL IMPOSITION BY ZONAL STATES OF THE NUCLEAR-WEAPON-FREE STATUS ON SUCH AREAS IN VIOLATION OF INTERNATIONAL LAW, SINCE THE NUCLEAR-WEAPON STATES WOULD CONCUR IN UNDERTAKING TO RESPECT SUCH AREAS AS NUCLEAR-WEAPON FREE. OTHER EXPERTS, HOWEVER, CONSIDERED THAT SUCH PROPOSALS FOR SAFETY AREAS APART FROM THE SECURITY AND POLITICAL PROBLEMS INVOLVED, RAISED LEGAL ISSUES THAT ARE NOT RELEVANT TO THE ISSUES INVOLVED IN CREATING NUCLEAR-WEAPON-FREE ZONES.

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ACTION ACDA-10

INFO OCT-01 IO-10 ISO-00 AF-06 ARA-10 CIAE-00 DODE-00

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RELATIONSHIP WITH EXISTING TREATIES

13. IT IS UNDERSTOOD THAT TREATIES ESTABLISHING NUCLEAR-WEAPON-FREE ZONES SHOULD BE CONSISTENT WITH OTHER TREATY OBLIGATIONS OF THE ZONAL STATES. IF SUCH CONSISTENCY IS TO BE ACHIEVED, TWO TYPES OF INSTRUMENTS WILL HAVE TO BE TAKEN INTO ACCOUNT: (A) THOSE OF GENERAL APPLICATION OR INTEREST, AND (B) THOSE OF PARTICULAR APPLICATION OF INTEREST. IN THE FIRST CATEGORY, APART FROM THE CHARTER OF THE UNITED NATIONS, CLOSE ATTENTION WILL HAVE TO BE PAID TO THE TREATY BANNING NUCLEAR WEAPONS TESTS IN THE ATMOSPHERE, IN OUTER SPACE AND UNDER WATER, THE TREATY ON THE PROHIBITION OF EMPLACEMENT OF NUCLEAR WEAPONS AND OTHER WEAPONS OF MASS DESTRUCTION ON THE SEA-BED AND THE OCEAN FLOOR AND IN THE SUBSOIL THEREOF, THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS AND, FROM ANOTHER POINT OF VIEW, THE STATUTE OF IAEA. IN THE SECOND CATEGORY, IT IS DESIRABLE THAT CONSISTENCY SHOULD BE ACHIEVED WITH THE INSTRUMENTS APPLICABLE IN PARTICULAR REGIONS. IT WILL ALSO BE NECESSARY TO KEEP CLOSELY IN MIND THE COMMITMENTS WHICH ZONAL STATES MAY HAVE MADE UNDER ANY SECURITY ALLIANCES - MULTI-LATERAL OR BILATERAL - AND UNDER SUCH CONVENTIONS OR AGREE-UNCLASSIFIED

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MENTS AS THEY MAY HAVE CONCLUDED AMONG THEMSELVES OR WITH THIRD STATES ON SUCH MATTERS AS NUCLEAR CO-OPERATION. IT IS CLEAR THAT ONCE A STATE HAS DECIDED IT WISHES TO PARTICIPATE IN A NUCLEAR-WEAPON-FREE ZONE NO COMMITMENTS TAKEN UNDER OTHER AGREEMENTS CAN JUSTIFY ANY EXCEPTIONS TO THE OBLIGATIONS THAT ARE UNDERTAKEN IN A NUCLEAR-WEAPON-FREE ZONE TREATY.

14. MOST EXPERTS NOTED THAT THE NPT REAFFIRMS IN ITS ARTICLE VII THE RIGHT OF ANY GROUP OF STATES TO CONCLUDE REGIONAL TREATIES IN ORDER TO ASSURE THE TOTAL ABSENCE OF NUCLEAR WEAPONS IN THEIR RESPECTIVE TERRITORIES. THE VIEW WAS ALSO EXPRESSED THAT PROPOSALS FOR NUCLEAR-WEAPON-FREE ZONES SHOULD PRESCRIBE STANDARDS OF COMPLIANCE NO LESS STRINGENT THAN IN THE NPT, AND THAT THE LEGAL OBLIGATIONS FOR STATES MEMBERS OF SUCH ZONES SHOULD BE FULLY COMPATIBLE WITH THOSE UNDER THE NPT. OTHER EXPERTS FELT, HOWEVER, THAT THE STANDARDS OF COMPLIANCE AND THE LEGAL OBLIGATIONS FOR STATES MEMBERS OF ANUCLEAR-WEAPON-FREE ZONE SHOULD BE ESTABLISHED DURING THE NEGOTIATIONS AMONG THOSE STATES.

15. IT WAS SUGGESTED BY SOME EXPERTS THAT STATES CREATING NUCLEAR-WEAPON-FREE ZONES SHOULD BE PARTIES TO THE NPT. OTHER EXPERTS NOTED THAT, WHILE ADHERENCE TO THE NPT IS DESIRABLE, IT CANNOT BE CONSIDERED A PREREQUISITE FOR MEMBERSHIP

IN A NUCLEAR-WEAPON-FREE ZONE AND NOTED, AS A PRECEDENT, THAT SEVERAL STATES NON-PARTIES TO THE NPT ARE, HOWEVER, PARTIES TO THE TREATY OF Tlatelco.

#### RELATIONSHIP WITH THE UNITED NATIONS

16. THE UNITED NATIONS CAN PLAY A POSITIVE ROLE IN THE ESTABLISHMENT OF NUCLEAR-WEAPON-FREE ZONES. SOME EXPERTS MAINTAINED THAT A NUCLEAR-WEAPON-FREE ZONE BEARS A DOUBLE RELATIONSHIP WITH THE UNITED NATIONS. IN THE FIRST PLACE THE WORLD ORGANIZATION SHOULD PROMOTE SUCH ZONES - NOT IMPOSE THEM, BUT ENCOURAGE THEM - AND IN THE SECOND PLACE THE UNITED NATIONS CAN BE A GUARANTOR OF THOSE ZONES IN THE LIGHT OF CHAPTER VII OF THE CHARTER. OTHER EXPERTS HELD THAT, ALTHOUGH THE UNITED NATIONS COULD PROVIDE A FORUM FOR THOSE WHO WISH TO PROMOTE THE ESTABLISHMENT OF NUCLEAR-WEAPON-FREE ZONES IN PARTICULAR REGIONS AND COULD ALSO MAKE AVAILABLE MACHINERY AND SERVICES

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TO FACILITATE THEIR EFFORTS, THE UNITED NATIONS, AS AN INTERNATIONAL ENTITY, COULD NOT BE SAID TO HAVE A SPECIFIC RESPONSIBILITY UNDER THE CHARTER TO ENCOURAGE THE CREATION OF NUCLEAR-WEAPON-FREE ZONES.

17. IN VIEW OF THE UN FUNCTION IN RESPECT TO SETTLEMENT OF INTERNATIONAL DISPUTES, A NUCLEAR-WEAPON-FREE ZONE COULD BENEFIT FROM THE EXISTING UN MACHINERY, INCLUDING THE INSTITUTIONS MENTIONED IN CHAPTERS VI AND VII OF THE CHARTER RELATED TO THE PACIFIC SETTLEMENT OF DISPUTES AND ACTIONS WITH RESPECT TO THREATS TO PEACE, BREACHES OF PEACE, AND ACTS OF AGGRESSION. SOME EXPERTS CONSIDER THAT A STRONGER LINK BETWEEN THE SYSTEM OF SAFEGUARDS AND CONTROL IN THE ZONE AND THE SYSTEM OF COLLECTIVE SECURITY UNDER THE UNITED NATIONS CHARTER SHOULD BE CREATED.

18. THE UNITED NATIONS CAN HELP IN VARIOUS STAGES OF THE ESTABLISHMENT AND FUNCTIONING OF NUCLEAR-WEAPON-FREE ZONES. THE UN CAN ALSO USE ITS AUTHORITY IN SUPPORTING THE CONCEPT, CAN PROVIDE ASSISTANCE INCLUDING, IF DESIRED AND CONSIDERED NECESSARY, THE MACHINERY TO ENABLE THE STATES CONCERNED TO MAKE PROGRESS IN THEIR DIRECT CONSULTATIONS. SOME EXPERTS FELT THAT THE UNITED NATIONS COULD ALSO EXERT INFLUENCE REGARDING THE UNDERTAKING BY NUCLEAR-WEAPON STATES OF OBLIGATIONS VIS-A-VIS SUCH ZONES. SOME OTHER EXPERTS POINTED OUT THAT THIS ROLE OF THE UNITED NATIONS WOULD BE JUSTIFIED ONLY IN THOSE CASES WHERE SUCH ZONES ARE IN FACT COMPLETELY FREE OF NUCLEAR WEAPONS AND ARE ESTABLISHED IN FULL COMPLIANCE WITH INTERNATIONAL LAW.

19. IN VIEW OF THE OVERALL RESPONSIBILITIES OF THE UNITED

NATIONS IN REGARD TO ARMS LIMITATION, DISARMAMENT AND COLLATERAL  
DISARMAMENT MEASURES, IT WOULD BE APPROPRIATE FOR THE PARTIES  
TO A NUCLEAR-WEAPON-FREE ZONE TREATY TO CONVEY TO THE UNITED  
NATIONS THROUGH THE SECRETARY-GENERAL, OR IN ANY OTHER WAY,  
PERIODIC INFORMATION ABOUT THE IMPLEMENTATION OF THE PURPOSES  
AND PROVISIONS OF THE TREATY.

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